

1                               IN THE UNITED STATES DISTRICT COURT  
2                               FOR THE DISTRICT OF HAWAII

3           UNITED STATES OF AMERICA,               ) CR 16-00787-SOM-1  
4    ) )  
5                               Plaintiff,               ) Honolulu, Hawaii  
6    ) December 16, 2016  
7               vs.                                        ) )  
8    ) CHANGE OF PLEA  
9           NIALI SILVA,                                ) )  
10    ) )  
11                               Defendant.             ) )  
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12    APPEARANCES:

13    For the Government:           MICHAEL WHEAT  
14    Office of the United States Attorney  
15    Trial Division  
16    8801 Front Street, Room 6293  
17    San Diego, CA 92101

18    For the Defendant:           WILLIAM A. HARRISON  
19    Harrison & Matsuoka  
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23    Official Court Reporter:    Debra Read, CSR CRR RMR RDR  
24    United States District Court  
25    300 Ala Moana Boulevard  
  Honolulu, Hawaii 96850  
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26    Proceedings recorded by machine shorthand, transcript produced  
27    with computer-aided transcription (CAT)

1 FRIDAY, DECEMBER 16, 2016 9:18 A.M.

2 THE COURT: Mr. Silva, is it your intention this  
3 morning to plead guilty to the charge contained in the  
4 complaint?

5 THE DEFENDANT: Yes.

6 THE COURT: Before I can accept your guilty plea, I  
7 must know that you understand what you're doing; that you're  
8 pleading guilty freely and voluntarily; that there is a factual  
9 basis for your plea; that the ends of justice would be met to  
10 allow you to make such a plea. To make these determination I'm  
11 going to ask you some questions. If you do not understand any  
12 of the words of the question, will you please say so?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Would you administer the  
15 oath.

16 THE COURTROOM MANAGER: Sorry, Judge. The mics are  
17 not -- but it's recording.

18 (Defendant sworn.)

19 THE COURT: Mr. Silva, what is your full name?

20 THE DEFENDANT: Niall John Ken Silva.

21 THE COURT: And how old are you?

22 THE DEFENDANT: Fifty-two.

23 THE COURT: And how far did you go in school?

24 THE DEFENDANT: High school and some college.

25 THE COURT: Have you taken any medication, alcohol,

1 or drugs of any kind today?

2 THE DEFENDANT: Just my inhaler for asthma.

3 THE COURT: And that's prescribed to you?

4 THE DEFENDANT: Yeah, prescription only.

5 THE COURT: Do you feel well and alert?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understand what is going on?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you been treated recently for any  
10 mental illness or addiction to narcotic drugs of any kind?

11 THE DEFENDANT: No, sir.

12 THE COURT: Mr. Harrison, to the best of your  
13 knowledge is the defendant fully competent to enter a valid  
14 plea today?

15 MR. HARRISON: Yes, Your Honor.

16 THE COURT: The court finds that the defendant is  
17 fully confident and capable of entering an informed plea.

18 Mr. Silva, if you choose to enter a guilty plea in this  
19 case, you have a right to enter that plea before a United  
20 States District Judge. If you consent, however, you may enter  
21 your guilty plea before me, a United States Magistrate Judge.

22 If you enter a guilty plea here today, Judge Mollway would  
23 impose sentence at a later hearing. You understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I have before me a document entitled

1 Consent to Rule 11 Plea in a Felony Case Before United States  
2 Magistrate Judge.

3 Mr. Silva, did you sign this document?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is it your wish to consent to enter your  
6 plea before me, a magistrate judge, and to give up or waive  
7 your right to enter that plea before a United States District  
8 Judge?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Mr. Harrison, have you  
11 discussed the consent form with your client?

12 MR. WHEAT: I have, Your Honor.

13 THE COURT: You satisfied that he understands it?

14 MR. WHEAT: I am.

15 THE COURT: And you've also signed the document?

16 MR. WHEAT: I did.

17 THE COURT: The court finds that the defendant has  
18 consented to enter his plea before a United States Magistrate  
19 Judge.

20 Mr. Silva, have you received a copy of the information  
21 pending against you, that is, the written charge made against  
22 you in this case?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you discussed the charge and all of  
25 the facts surrounding the charge with Mr. Harrison, your

1 attorney?

2 THE DEFENDANT: Yes.

3 THE COURT: Are you fully satisfied with the legal  
4 representation that you've received from Mr. Harrison, your  
5 attorney?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Harrison, is the defendant's guilty  
8 plea before the court today pursuant to your advice and  
9 recommendation?

10 MR. HARRISON: It is, Your Honor.

11 THE COURT: Mr. Silva, you have a constitutional  
12 right to require that a group of citizens called a grand jury  
13 review the case and determine whether the United States  
14 presents sufficient evidence to bring charges against you. If  
15 the grand jury finds the evidence sufficient, it returns  
16 charges in the form of what's called an indictment.

17 If the grand jurors do not find probable cause to believe  
18 that you committed the crime with which you are charged, you  
19 would not be indicted.

20 If you waive indictment by the grand jury, the case will  
21 proceed against you on United States Attorney's information  
22 just as though you had been indicted.

23 Do you understand your right to grand jury review of this  
24 case?

25 THE DEFENDANT: Yes.

1           THE COURT: Do you wish to waive your right to a  
2 indictment and agree to proceed on the charge as stated in the  
3 information?

4           THE DEFENDANT: Yes.

5           THE COURT: I have before me a document entitled  
6 Waiver of Indictment. Have you read and signed this document?

7           THE DEFENDANT: Yes.

8           THE COURT: Mr. Harrison, have you discussed the  
9 Waiver of Indictment with your counsel -- with your client?

10          MR. HARRISON: I have, Your Honor, yes.

11          THE COURT: Are you satisfied that he understands  
12 it?

13          MR. HARRISON: Yes, Your Honor.

14          THE COURT: The court finds that the defendant has  
15 knowingly and voluntarily waived his right to grand jury review  
16 and indictment in this case and therefore will execute the  
17 Waiver of Indictment.

18          Mr. Silva, the court's been furnished with a written plea  
19 agreement. Is this your signature on the last page?

20          THE DEFENDANT: Yes, sir.

21          THE COURT: Did you have an opportunity to read and  
22 discuss the plea agreement with your lawyer before you signed  
23 it?

24          THE DEFENDANT: Yes.

25          THE COURT: Do you understand the terms of the plea

1 agreement?

2 THE DEFENDANT: Yes.

3 THE COURT: Does the plea agreement cover every  
4 aspect of the agreement that you have with the government in  
5 this case?

6 THE DEFENDANT: Yes.

7 THE COURT: Has anyone made any other or different  
8 promise or assurance of any kind to an effort to get you to  
9 plead guilty?

10 THE DEFENDANT: No.

11 THE COURT: Has anyone attempted to force you to  
12 plead guilty or repress you or threaten you in any way?

13 THE DEFENDANT: No.

14 THE COURT: Mr. Wheat, would you summarize the major  
15 terms of the plea agreement?

16 MR. WHEAT: Your Honor, the defendant has agreed to  
17 waive indictment in this case and plead guilty to an  
18 information charging him with conspiracy. Basic terms of the  
19 plea agreement are that he will plead to that charge and the  
20 United States will recommend the guidelines that are set forth  
21 in the plea agreement.

22 THE COURT: Is there a waiver of appeal provision?

23 MR. WHEAT: Yes, and there's also a waiver of  
24 appeal. I'm sorry, Your Honor, correct.

25 THE COURT: And there's a cooperation provision?

1 MR. WHEAT: Yes.

2 THE COURT: All right. Mr. Silva, does that  
3 accurately summarize your agreement with the government in this  
4 case?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that you are waiving  
7 and giving up all of your rights to appeal except for two  
8 situations: first, if Judge Mollway imposes a sentence above  
9 the advisory sentencing guidelines, and second, in the event of  
10 ineffective assistance of counsel?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you fully understand the charge  
13 covered by the plea agreement?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Wheat, what are the maximum possible  
16 penalties for each of the --

17 MR. WHEAT: Your Honor, if the case were to go to  
18 trial, the defendant would be facing maximum of five years in  
19 custody, a \$250,000 fine, a \$100 special assessment, and up to  
20 3 years of supervised release.

21 THE COURT: Mr. Harrison, do you agree with that  
22 summary as to the possible penalties?

23 MR. HARRISON: I do, Your Honor.

24 THE COURT: Mr. Silva, do you understand that these  
25 are the possible penalties you face if you enter a guilty plea



1 to the charge in this case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: During a period of supervised release,  
4 you must comply with a set of conditions which will be  
5 explained to you by a probation officer. Those conditions will  
6 include requirements that you obey the law, that you report as  
7 required to the probation officer and other conditions. If the  
8 court finds that you violated any of these conditions, you  
9 could be required to serve additional prison time.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you presently on probation, parole,  
13 or supervised release from any other case?

14 THE DEFENDANT: No.

15 THE COURT: Mr. Wheat, does the United States  
16 contend that any felony offense to which the defendant is today  
17 pleading guilty occurred while he was released on bond in  
18 relation to some other federal criminal case?

19 MR. WHEAT: I do not, Your Honor.

20 THE COURT: Does that case involve possible  
21 restitution or forfeiture, Mr. Wheat?

22 MR. WHEAT: Uhm, potentially.

23 THE COURT: And that would be in the nature of?

24 MR. WHEAT: Potentially some forfeiture, but that  
25 has been -- that has yet to be determined at this stage.

1 THE COURT: And if there was to be forfeiture, it  
2 would be the subject of a separate civil action?

3 MR. WHEAT: That's correct.

4 THE COURT: Mr. Harrison?

5 MR. HARRISON: Well, Your Honor, I don't know of any  
6 forfeiture matters at this point, so I can't speak to that  
7 issue. I don't believe there's any forfeiture issues in this  
8 matter.

9 THE COURT: All right. Mr. Silva, if you were  
10 convicted of the charge in this case, you may lose valuable  
11 civil rights including the right to vote, the right to hold  
12 public office, the right to serve on a jury, and the right to  
13 possess any kind of a firearm.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: The United States Sentencing Commission  
17 has issued guidelines for judges to use in determining the  
18 sentence in a criminal case. While judges are not bound to  
19 apply the guidelines, judges must consult the guidelines and  
20 take them into account in determining a sentence.

21 Have you and your attorney talked about how the guidelines  
22 might apply to your case?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that the court will  
25 not be able to determine the advisory guideline sentence for

1 your case until after the presentence report has been completed  
2 and you and the government have had an opportunity to challenge  
3 the reported facts and the application of the guidelines  
4 recommended by the probation officer, and that the sentence  
5 imposed may be different from any estimate your attorney may  
6 have given you?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you also understand that after your  
9 felony guideline range has been determined, the court has the  
10 discretion and authority to depart from the guidelines and to  
11 impose a sentence that is more severe or less severe than the  
12 sentence indicated in the advisory sentencing guideline range?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that Judge Mollway  
15 will also determine your sentence based on admissions that you  
16 make at this hearing?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that you do not have  
19 to admit to factual matters in dispute, but if you do admit  
20 certain facts at this hearing, Judge Mollway will rely on your  
21 admissions at the time of sentencing and that your admissions  
22 may increase your sentence?

23 THE DEFENDANT: Yes.

24 THE COURT: If the sentence is more severe than you  
25 expected, you will still be bound by your plea. Even if you do

1 not like the sentence imposed by the court, you will not be  
2 able to withdraw your plea. The time to make that decision is  
3 now.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Parole has been abolished. If you are  
7 sentenced to prison, you will not be released on parole.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Silva, you have a right to plead not  
11 guilty to any offense charged against you and to persist in  
12 that plea. You would then have a right to trial by jury.

13 During that trial you would have the right to assistance  
14 of counsel for your defense, the right to see and hear all the  
15 witnesses and to have your attorney cross-examine them, the  
16 right to testify yourself or to decline to testify and remain  
17 silent, and the right to have the court issue subpoenas for any  
18 witnesses you wish to call in your defense.

19 At trial you would be presumed to be innocent and the  
20 United States would have the burden of proving that you're  
21 guilty beyond a reasonable doubt.

22 Before you can be convicted, all 12 jurors must be  
23 convinced that the government has met that burden. If you are  
24 found guilty after trial, you would have the right to appeal  
25 that conviction to a higher court. And if you could not afford

1 to pay the cost of an appeal, the government would pay those  
2 costs for you.

3 Do you understand that you have all of these rights?

4 THE DEFENDANT: Yes.

5 THE COURT: If you plead guilty, however, and if the  
6 court accepts that plea, there will be no trial. You will be  
7 waiving or giving up your right to trial and all of the other  
8 rights I've described.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Also, so long as you plead not guilty,  
12 you have the right to remain silent. But if you plead guilty  
13 or are waiving that right, I will ask you questions about what  
14 occurred and you must answer those questions truthfully under  
15 oath even if your answers establish that you committed a crime.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Mr. Wheat, would you  
19 summarize for the court and the defendant the essential  
20 elements which the government would be required to approve if  
21 there was a trial on the charge?

22 MR. WHEAT: Your Honor, the special elements are  
23 stated in paragraph 1 of the plea agreement at page 2. There  
24 are 3 elements: 1, There was an agreement between two or more  
25 persons to commit an offense against the United States, that

1 is, to obstruct justice in violation of Title 18 United States  
2 Code Section 1512(c) and 1519, and to make false statements in  
3 violation of Title 18 United States Code Section 1001.

4 The second element, defendant became a member of the  
5 conspiracy knowing of at least one of its objects and intending  
6 to help accomplish it.

7 And finally element 3, one of the members of the  
8 conspiracy performed at least one overt act for the purpose of  
9 carrying out the conspiracy.

10 THE COURT: Mr. Harrison, do you disagree in any  
11 respect with that summary as to the essential elements?

12 MR. HARRISON: No, Your Honor.

13 THE COURT: Mr. Silva, do you fully understand that  
14 if there was a trial on the charge, United States would be  
15 required to present evidence sufficient to prove each of these  
16 essential elements beyond a reasonable doubt?

17 THE DEFENDANT: Yes.

18 THE COURT: Mr. Silva, the plea agreement includes a  
19 written summary of facts specifically beginning at paragraph 8  
20 on page 4 and continuing on to page 7. Have you read carefully  
21 through that statement of facts?

22 THE DEFENDANT: Yes.

23 THE COURT: Are those facts all true in every  
24 respect?

25 THE DEFENDANT: Yes.

1           THE COURT: Would you tell me in your own words what  
2 you did that constitutes the crime charged against you in this  
3 case?

4           THE DEFENDANT: I received information from another  
5 officer and I documented it and I submitted it for the case,  
6 the initial case. And that information turned out to be false.

7           THE COURT: Mr. Silva, what I'm going to do -- I'm  
8 sorry. Go ahead, Mr. Silva.

9           THE DEFENDANT: And when I went into the court, I  
10 attested to that document at a later time.

11           THE COURT: Mr. Silva, what I'm going to ask  
12 Mr. Wheat to do is to make a proffer of what he believes he  
13 would be able to prove if the case were to go to trial against  
14 you. I want you to listen to what he tells me because when  
15 he's finished, I'm going to ask you whether you heard what he  
16 said and whether what he said about you and your conduct is  
17 true. Okay?

18           Mr. Wheat, the government's proffer?

19           MR. WHEAT: Your Honor, if this matter were to go to  
20 trial, the United States would be able to prove beyond a  
21 reasonable doubt the following facts, and this is a summary of  
22 the facts stated in the plea agreement: that on June 22nd of  
23 2013, Mr. Silva was employed as a Honolulu Police Department  
24 assigned to the Criminal Intelligence Unit, and on that day he  
25 received information from other police officers to go to a

1 police headquarters where he then was given a hard drive that  
2 was retrieved from a surveillance system at a residence in  
3 Kahala. At that time Mr. Silva agreed that he would state that  
4 he was the person who had gone to the residence in Kahala that  
5 morning at 8:59 A.M., checked out the surveillance system, made  
6 sure it was operational and that it was recording, and that he  
7 then retrieved the hard drive and brought it back to the police  
8 station where he then performed certain acts to it.

9 In reality, Mr. Silva did not do those acts and went to  
10 the police station, retrieved the hard drive from another  
11 officer, a co-conspirator, and at that time took excerpts or  
12 cuts from that hard drive.

13 He then stored that hard drive in his desk and did not  
14 place it into evidence until about a week later. He was then  
15 interviewed by postal authorities and stated that he had in  
16 fact retrieved the hard drive at the residence when that was  
17 not true.

18 He then ultimately ended up testifying here in the United  
19 States District Court in December of 2014 that he had gone to  
20 the residence and retrieved the hard drive, which was false.  
21 He stated that he had -- he completed reports to that effect,  
22 that he had tested the system and that he was the source for  
23 that information.

24 He entered into that agreement knowing that he was not the  
25 person who had performed those acts and testified falsely in



1 the United States District Court.

2 After that, he was interviewed by other officers and  
3 federal officials and provided the same false statement to them  
4 that he had provided in court.

5 THE COURT: Mr. Silva, did you hear what Mr. Wheat  
6 just told me?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is what he said about you and your  
9 conduct all true?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Wheat, are you satisfied?

12 MR. WHEAT: United States is satisfied.

13 THE COURT: Mr. Silva, if you plead guilty, the  
14 court will order that a presentence report be prepared. The  
15 sentencing judge will decide whether or not to accept the plea  
16 agreement based in part upon the contents of the presentence  
17 report. If the court decides to reject the plea agreement, you  
18 would then have an opportunity to withdraw your guilty plea and  
19 change it to not guilty.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Mr. Silva, how do you now  
23 plead then to the charge in Count 1 of the information filed on  
24 December 9, 2016? Guilty or not guilty?

25 THE DEFENDANT: Guilty, sir.

1           THE COURT: Mr. Harrison, are you aware of any  
2 reason why the court should not accept the defendant's guilty  
3 plea?

4           MR. HARRISON: No, Your Honor.

5           THE COURT: The court finds that the defendant is  
6 fully competent and capable of entering an informed plea; that  
7 his plea of guilty is knowing and voluntary and supported by an  
8 independent basis in fact containing each of the essential  
9 elements of the offense.

10          I'm therefore signing the report and recommendation  
11 concerning plea of guilty. Subject to the court's  
12 consideration of the plea agreement pursuant to Rule 11(c)(3)  
13 of the Federal Rules of Criminal Procedure, I recommend that  
14 the defendant be adjudged guilty and have sentence imposed.  
15 Objections to this report and recommendation are waived unless  
16 filed and served within 14 days.

17          Mr. Silva, I'm ordering our Probation Department to  
18 prepare a presentence report in this case. This is a document  
19 about you and your case which will assist the judge in  
20 determining your sentence. The probation officer will  
21 interview you. If you wish, your attorney may be present at  
22 that interview. You and your attorney will have an opportunity  
23 to read the report before sentencing and to file written  
24 objections to its contents. You and your attorney will also  
25 have an opportunity to address the judge at the hearing before

1 the judge imposes sentence.

2 Date and time.

3 THE COURTROOM MANAGER: April 3rd, 2017, at 1:30  
4 P.M. before Judge Mollway.

5 THE COURT: Mr. Harrison, I have a report from  
6 Pretrial Services.

7 MR. WHEAT: Yes, Your Honor. Both my client and I  
8 have reviewed the report. We concur in the recommendations.  
9 Mr. Silva has no prior criminal history, he's gainfully  
10 employed, and as indicated, he's taken full responsibility for  
11 his -- for these matters.

12 THE COURT: Mr. Wheat?

13 MR. WHEAT: Your Honor, I've had an opportunity to  
14 read the report prepared by Pretrial Services and I also would  
15 concur. I think those conditions are appropriate for his  
16 release in this matter.

17 THE COURT: The court then taking judicial notice of  
18 the information and documents on file in this criminal number,  
19 the report prepared by Pretrial Services, and having considered  
20 the comments of counsel, based on the information presented the  
21 court finds that there are conditions which exist which would  
22 reasonably assure the appearance of the defendant and the  
23 safety of any other person in the community and therefore, the  
24 defendant, Niall Silva, may be released on the following terms  
25 and conditions:

1 First, he post an unsecured bond in the amount of \$25,000.

2 He must comply with Pretrial Services supervision and  
3 abide by all conditions of release as directed by Pretrial  
4 Services.

5 He is required to inform Pretrial Services within 24 hours  
6 of any contact with law enforcement, including, but not limited  
7 to, any arrest, questioning, or traffic stop.

8 He's not to apply for or to obtain a passport.

9 His travel is restricted to the state of Hawaii.

10 He is to have no contact, direct, indirect, or through  
11 third parties with any co-defendants, co-conspirators, or  
12 witnesses in this or any related case.

13 The United States Attorney's Office will provide Pretrial  
14 Services with initial and updated lists of names of persons  
15 with whom the defendant's contact is prohibited.

16 He is prohibited from owning, possessing, or controlling  
17 any firearm or ammunition. He must immediately surrender all  
18 firearms and ammunition to an agent approved by Pretrial  
19 Services.

20 In conjunction with the Ho'okele program, the court  
21 authorizes the defendant to participate in voluntary stress and  
22 anxiety counseling arranged by Pretrial Services.

23 Finally, he must not commit any offense in violation of  
24 federal, state, or local law while on release. He must appear  
25 at all proceedings as required and surrender for service of any

1 sentence imposed as directed.

2 He must also cooperate in the collection of a DNA sample.  
3 It is authorized by 42 United States Code Section 14135(a).

4 Mr. Silva, you understand you must follow and comply with  
5 each and every one of the conditions I stated this morning?

6 THE DEFENDANT: Yes.

7 THE COURT: Violation of any one condition may  
8 result in the termination of your release and may expose you to  
9 sanctions in a separate criminal charge.

10 I'll direct the defendant to the marshal's service for  
11 processing of documents and in accordance with the terms and  
12 conditions of his release as stated this morning.

13 Mr. Wheat, anything further?

14 MR. WHEAT: Nothing further, Your Honor. Thank you.

15 THE COURT: Mr. Harrison, anything further?

16 MR. HARRISON: No, Your Honor. Thank you.

17 THE COURT: We'll be in recess. Thank you very  
18 much.

19 MR. WHEAT: Thank you, Your Honor.

20 (Proceedings concluded at 9:40 A.M.)

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TRANSCRIBER'S CERTIFICATE

I, DEBRA READ, court approved transcriber, United States District Court, District of Hawaii, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at Honolulu, Hawaii, December 20, 2016.

/s/ Debra Read  
DEBRA READ, CSR CRR RMR RDR